

Section 22

From: Section 22
Sent: Friday, 11 July 2014 9:16 PM
To: Section 22
Cc: Section 22; pilbera@yahoo.com
Subject: Letter to Mr Palmer and Palmer United Party Senators from Minister Greg Hunt
[SEC=UNCLASSIFIED]
Attachments: Letter to Mr Palmer 11 July 2014.pdf; B14HV107 V09 V01.doc

Dear Mr Palmer and Senators,

Please find attached a letter from Minister Hunt regarding the introduction of the carbon tax repeal bills next week.

Please let me know if you have any questions.

Cheers

Section 22

Adviser

Office of the Hon Greg Hunt MP | Minister for the Environment
Ph: 02 6277 7920 | Section 22
Section 22

Parliament House, Canberra, ACT 2600



The Hon Greg Hunt MP

Minister for the Environment

11 July 2014

Mr Clive Palmer MP
Federal Leader of Palmer United Party
Member for Fairfax
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Mr Palmer,

I would like to confirm the Government's intention to reintroduce the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 and associated Bills, into the House of Representatives on Monday 14 July 2014.

As you have requested, please find attached the draft Palmer United Party (PUP) amendment as well as a description of all changes that have been made. In the draft presented by the Government, we are advised that the amendment is now in a form that can be introduced into the House of Representatives.

The rules guiding introduction of Bills and amendments in the House of Representatives clearly state that Bills relating to taxation and revenue can not be introduced by a Private Member. This is informed by section 56 of the constitution and standing orders 179 and 180. House of Representatives' Practice (page 583) clearly states:

A private Member may not initiate a bill imposing or varying a tax or requiring the appropriation of revenue or moneys. This would be contrary to the constitutional and parliamentary principle of the financial initiative of the Executive – that is, that no public charge can be incurred except on the initiative of the Government.

To facilitate your proposal, the Government is working in good faith to provide you with options that meet the requirements of the House and the intent of your existing amendments. The options include you introducing a constitutionally compliant amendment (as per the attached) that can be introduced by a Private Member or a Minister moving an amendment with the taxation clause in it.

The differences between the amendments you sought and the current draft is that the new amendments are focussed on reducing the regulatory burden for small businesses and households and to ensure constitutional compliance.

The Australian Government Solicitor and the Office of Parliamentary Counsel have advised that these changes are necessary to ensure that the amendments are constitutionally valid. The intent of the incorporated amendments remains the same.

To ensure the carbon tax is repealed as soon as possible, there are procedural processes that the Government is seeking your agreement to in both the House of Representatives and the Senate.

The Government proposes to move a debate management motion in the House of Representatives on Monday 14 July 2014 at 12 noon that will provide for a limited second reading debate and limited consideration in detail, which will include the opportunity for you to speak in the House and seek the call to move your amendments should you so desire. Moving this motion ensures the Bills can be dealt with in the House of Representatives and transmitted to the Senate as soon as practicable. We are hopeful this will occur by Monday evening. If the PUP is seeking to move these amendments you will need to ask the House of Representatives Clerk to draft as soon as possible to facilitate circulation of your amendments at least one hour prior to moving them during the consideration in detail stage.

Following the passage of the amended Bills through the House of Representatives they will be sent to the Senate. I understand the Leader of the Government in the Senate, Senator Abetz, will be convening a Leaders' and Whips' meeting (including crossbench Senators) on Monday to discuss the timetable for passage of the package of legislation.

The Government will seek to have the Senate sit extended hours to ensure the Bills are dealt with.

As the Bills have already been considered by the Senate Environment and Communications Legislation Committee twice and in the committee of the whole stage, the Government is now seeking agreement from crossbenchers that these Bills not be referred to Committee for inquiry. The Bills will not be able to be progressed if the Senate sends them to inquiry with a reporting date beyond Tuesday 15 July 2014.

In regard to the repeal of the carbon tax, the Government's intention has always been to ensure that all carbon tax savings will be passed back to consumers. For this reason the Government provided the Australian Competition and Consumer Commission with \$10 million to oversee and, where required, enforce with enhanced powers, the pass back to Australian families and businesses of carbon tax costs.

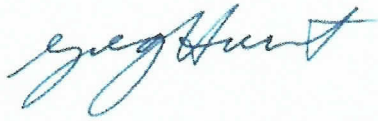
The Senate's unwillingness to support the repeal of the carbon tax means that the carbon tax remains law and a burden on Australian households, pensioners, farmers and businesses costing \$11 million per day in additional electricity costs. Until the law is repealed these groups will continue to be forced to pay for the carbon tax through higher heating bills this winter, higher costs and reduced profitability.

We believe the Government has met the requirements that PUP has set for your support of the repeal package. We seek your confirmation that PUP will support the repeal of the carbon tax this week in the House of Representatives and the Senate.

I am sure we both agree that the sooner the carbon tax is removed the better for all Australians.

We look forward to working with you to repeal the carbon tax this coming week. Failure to do so would have serious consequences for Australian families and businesses.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Greg Hunt". The signature is fluid and cursive, with the first name "Greg" being more prominent than the last name "Hunt".

Greg Hunt
Minister for the Environment

cc:

Section 22

2013-2014

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Clean Energy Legislation (Carbon Tax Repeal) Bill 2014

(Amendments to be moved by Mr Palmer, the Federal Leader of the Palmer United Party)

- (1) Schedule 2, heading, page 71 (lines 1 and 2), omit “Price exploitation in relation to the carbon tax repeal”, substitute “Carbon tax price reduction obligation”.
[carbon tax price reduction obligation]
- (2) Schedule 2, item 3, page 71 (lines 13 and 14), omit “Price exploitation in relation to the carbon tax repeal”, substitute “Carbon tax price reduction obligation”.
[carbon tax price reduction obligation]
- (3) Schedule 2, item 3, page 71 (after line 24), after the third dot point in section 60, insert: line 17, omit “A corporation”, substitute “An entity”.
A entity may [carbon tax price reduction obligation]
- (4) Schedule 2, item 3, page 71 (line 21), omit “A corporation”, substitute “An entity”.
[carbon tax price reduction obligation]
- (5) Schedule 2, item 3, page 71 (after line 24), after the third dot-point in section 60, insert:

- An entity that supplies electricity or natural gas will be required to explain and substantiate:
 - (a) how the carbon tax repeal has affected, or is affecting, the entity’s regulated supply input costs; and
 - (b) how reductions in the entity’s regulated supply input costs that are directly or indirectly attributable to the carbon tax repeal are reflected in the prices charged by the entity for regulated supplies of electricity or natural gas.
- An entity that sells electricity or natural gas to customers must:
 - (a) give a carbon tax removal substantiation statement to the Commission; and
 - (b) include in the statement the entity’s estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity’s cost savings that have been, are, or will be, attributable to the carbon tax repeal and that have been, are being, or will be, passed on to customers during the financial year that began on 1 July 2014; and
 - (c) provide information with the statement that substantiates such an estimate; and

Comment [A1]: There are multiple extra instances where the term “entity” should be used (instead of referring to a “corporation”, as was previously the case)

Comment [A2]: Reflects that this obligation is intended to apply to electricity or natural gas supplies, and not the broader category of ‘regulated supplies’ (which would have included 75,000 Synthetic Greenhouse Gas suppliers).

- (d) communicate to -customers a statement that identifies, on an average annual percentage price basis, or an average annual dollar price basis, the estimated cost savings to -customers that are for the financial year that began on 1 July 2014.

[carbon tax price reduction obligation]

- (6~~4~~) Schedule 2, item 3, page 72 (line 1), after “for”, insert “certain”.

[carbon tax price reduction obligation]

- (7~~5~~) Schedule 2, item 3, page 72 (after line 2), after section 60, insert:

60AA Objects etc.

- (1) The main objects of this Part are:
- (a) to deter price exploitation in relation to the carbon tax repeal at each point in the supply chain for regulated goods; and
 - (b) to ensure that all cost savings attributable to the carbon tax repeal are passed through the supply chain for regulated goods.
- (2) The intention of the Parliament in enacting this Part is to ensure that all cost savings attributable to the carbon tax repeal are passed on to consumers of regulated goods through lower prices.

[carbon tax price reduction obligation]

- (6~~8~~) Schedule 2, item 3, page 72 (before line 5), before the definition of *carbon charge component* in section 60A, insert:

applicable compliance period, for a carbon tax removal substantiation notice, has the meaning given by subsection 60FC(2).

[carbon tax price reduction obligation]

- (7~~9~~) Schedule 2, item 3, page 72 (after line 9), after the definition of *carbon charge component* in section 60A, insert:

carbon tax removal substantiation notice has the meaning given by subsection 60FA(3).

[carbon tax price reduction obligation]

- (8~~10~~) Schedule 2, item 3, page 72 (before line 10), before the definition of *carbon tax repeal* in section 60A, insert:

carbon tax removal substantiation statement has the meaning given by subsection 60FD(3).

[carbon tax price reduction obligation]

- (9~~11~~) Schedule 2, item 3, page 73 (after line 34), after the definition of *carbon tax scheme* in section 60A, insert:

electricity customer means an entity that purchases electricity.

electricity retailer means:

- (a) an entity who:
- (i) is a retailer within the meaning of the *National Energy Retail Law* as it applies in a State or a Territory; and/or

- (ii) sells electricity to electricity customers; or
- (b) ~~aan~~ entity who is a retailer within the meaning of the *Electricity Industry Act 2000* (Vic.); or
- (c) ~~aan~~ entity who is a retail entity within the meaning of the *Electricity Act 1994* (Qld); or
- (d) ~~aan~~ entity who:
 - (i) holds a retail licence within the meaning of the *Electricity Industry Act 2004* (WA); or
 - (ii) holds an integrated regional licence within the meaning of the *Electricity Industry Act 2004* (WA) that authorises the entity to sell electricity; or
- (e) ~~aan~~ entity who is an electricity entity within the meaning of the *Electricity Reform Act* (NT) and whose licence under that Act authorises the entity to sell electricity-
; or
- ~~(f) If any~~ a party or entity who is a seller of ~~gas or~~ electricity in the Commonwealth.

[carbon tax price reduction obligation]

(10) Schedule 2, item 3, page 73 (after line 36), after the definition of *engages in price exploitation in relation to the carbon tax repeal* in section 60A, insert:

~~-entity~~ means any of the following:

- (a) ~~a corporation (as defined by section 4);~~
- (b) an individual;
- ~~(bc)~~ a body corporate;
- ~~(e)~~ ~~an entity~~ a corporation sole;
- ~~(de)~~ a body politic;
- ~~(ef)~~ a partnership;
- ~~(fg)~~ any other unincorporated association or body of ~~entity~~ entities;
- ~~(gh)~~ a trust;
- ~~(h)-(i)~~ any party or entity which can or does buy or sell electricity or natural gas

[carbon tax price reduction obligation]

(13) Schedule 2, item 3, page 74 (after line 6), after the definition of *listed entity corporation* in section 60A, insert:

National Energy Retail Law means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA).

[carbon tax price reduction obligation]

(12) Schedule 2, item 3, page 74 (after line 9), after the definition of *natural gas* in section 60A, insert:

natural gas customer means an entity that purchases natural gas.

natural gas retailer means:

- (a) ~~aan~~ entity who:
 - (i) is a retailer within the meaning of the *National Energy Retail Law* as it applies in a State or a Territory; and/or
 - (ii) sells natural gas to natural gas customers; or

Comment [A3]: Note that the effect of this definition would be to extend the definition of "electricity retailer" to include entities right through the electricity supply chain. This may include an estimated 10,000 entities who may be involved in reselling electricity, such as camp sites, caravan parks, nursing homes and retirement villages. It may also include entities up the supply chain. This issue could be resolved by removing (f) from the definition.

The subsections (a) to (e) above it had been designed to piggyback off existing state legislation to define "electricity retailer" as what would be traditionally be considered retailers (eg Origin selling electricity to a residential or business customer for use by that customer).

Comment [A4]: Makes it clear that constitutional corporations are covered

Comment [A5]: No such thing as an 'entity sole' – would appear to be an inadvertent find and replace

Comment [A6]: Corrects an inadvertent find and replace

- (b) ~~aan~~ entity who is a gas retailer within the meaning of the *Gas Industry Act 2001* (Vic.); or
- (c) ~~aan~~ entity who is a retailer within the meaning of the *Gas Supply Act 2003* (Qld); or
- (d) ~~aan~~ entity who holds a trading licence under the *Energy Coordination Act 1994* (WA); or
- (e) ~~aan~~ entity who holds a licence under the *Gas Act 2000* (Tas.) to sell gas by retail; or

~~(f) Any an entity that who sells natural gas.~~

[carbon tax price reduction obligation]

Comment [A7]: Note that the effect of this definition is to extend the definition of "natural gas retailer" to include entities right through the supply chain. This issue could be resolved by removing (f) from the definition. This may include an estimated 10,000 entities who may be involved in reselling natural gas, such as camp sites, caravan parks, nursing homes and retirement villages. It may also include entities up the supply chain. This issue could be resolved by removing (f) from the definition.

~~(13)~~¹⁵ Schedule 2, item 3, page 74 (after line 18), after the definition of *regulated supply* in section 60A, insert:

regulated supply input costs of ~~aan~~ entity means the entity's input costs in relation to the making by the entity of regulated supplies ~~of electricity or natural gas.~~

Royal Assent day means the day on which the Act that inserted this Part receives the Royal Assent.

[carbon tax price reduction obligation]

The subsections (a) to (e) above it had been designed to piggyback off existing state legislation to define "natural gas retailer" as what would be traditionally be considered retailers (eg AGL selling natural gas to a residential or business customer for use by that customer).

~~(14)~~¹⁶ Schedule 2, item 3, page 75 (lines 3 and 4), omit "**Price exploitation in relation to the carbon tax repeal**", substitute "**Carbon tax price reduction obligation**".

[carbon tax price reduction obligation]

Comment [A8]: Reflects the restriction of the new section 60FA (concerning substantiation notices) to electricity and natural gas supplies.

~~(17)~~ Schedule 2, item 3, page 75 (line 6), omit "**A corporation**", substitute "**An entity**".

[carbon tax price reduction obligation]

~~(18)~~ Schedule 2, item 3, page 75 (line 8), omit "**a corporation**", substitute "**an entity**".

[carbon tax price reduction obligation]

~~(19)~~¹⁵ Schedule 2, item 3, page 75 (lines 11 to 17), omit paragraphs 60C(2)(b) and (c), substitute:

- (b) the price for the supply does not pass through all of the entity's cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal.

[carbon tax price reduction obligation]

~~(16)~~²⁰ Schedule 2, item 3, page 75 (after line 17), at the end of section 60C, add:

(3) For the purposes of this Part, in determining whether the price for a supply made by ~~aan~~ entity does not pass through all of the entity's cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal, have regard to the following matters:

- (a) the entity's cost savings that are directly or indirectly attributable to the carbon tax repeal;
- (b) how the cost savings mentioned in paragraph (a) can reasonably be attributed to the different supplies that the entity makes;
- (c) the entity's costs;
- (d) any other relevant matter that may reasonably influence the price.

[carbon tax price reduction obligation]

~~(17)~~²¹ Schedule 2, item 3, page 75 (before line 18), before section 60D, insert:

60CA Failure to pass on cost savings—250% penalty

(1) If:

(a) an entity contravenes subsection 60C(1) in relation to a particular supply of:

(i) electricity; or

(ii) natural gas; and

(b) the contravention involved a failure to pass through all of the entity's cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal;

the entity is liable to pay to the Commonwealth, by way of penalty, an amount equal to 250% of those cost savings that were not passed through.

When penalty becomes due and payable

(2) An amount payable by an entity under subsection (1) is due and payable on 1 July 2015.

Recovery of penalty

(3) An amount payable by an entity under subsection (1):

(a) is a debt due to the Commonwealth; and

(b) may be recovered by the Commission, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

Report to Parliament

(4) Within 13 months after the Royal Assent day, the Commission must report to Parliament in respect of penalties payable by entities.

[carbon tax price reduction obligation]

(22) Schedule 2, item 3, page 75 (line 18), omit "corporation", substitute "entity".

[carbon tax price reduction obligation]

(23) Schedule 2, item 3, page 75 (line 20), omit "a corporation", substitute "an entity".

[carbon tax price reduction obligation]

(24) Schedule 2, item 3, page 75 (line 21), omit "corporation", substitute "entity".

[carbon tax price reduction obligation]

(25) Schedule 2, item 3, page 75 (line 26), omit "corporation", substitute "entity".

[carbon tax price reduction obligation]

(26) Schedule 2, item 3, page 75 (line 29) to page 76 (line 2), omit paragraph 60D(2)(c), substitute:

(c) state that, in the Commission's opinion, the price for the supply did not pass through all of the entity's cost savings relating to the supply that were directly or indirectly attributable to the carbon tax repeal.

[carbon tax price reduction obligation]

(18)(27) Schedule 2, item 3, page 76 (before line 4), before paragraph 60D(3)(a), insert:

(aa) under section 60CA; or

[carbon tax price reduction obligation]

Comment [A9]: Ensures that the 250% penalty applies to be failure to provide cost savings and relates to an clear contravention of the legislation. For this reason, it does not appear in section 60FD, which concerns the provision of substantiation statements only.

The penalty, as drafted, applies to a failure to pass through cost savings for only electricity and natural gas. This applies to the same categories of entities covered by the original PUP provision, which would only have applied the penalty to retailers of electricity and natural gas.

The provision is drafted to make it clear that the 'penalty' is not a tax for constitutional purposes. The key thing to ensure that this is a penalty is that there is a clear prohibition of the conduct to which the penalty applies. The fact that something is called a 'penalty' does not necessarily mean that, for constitutional purposes, it would not be considered to be a tax.

Comment [A10]: Picks up the reporting provision from 60FD, to ensure that reporting continues to cover both the substantiation statements and any penalties.

(28) Schedule 2, item 3, page 76 (lines 9 to 13), omit all the words from and including “the notice” to and including “60C(2)(c).”, substitute:

the notice is prima facie evidence that the price for the supply did not pass through all of the entity’s cost savings relating to the supply that were directly or indirectly attributable to the carbon tax repeal.

[carbon tax price reduction obligation]

(29) Schedule 2, item 3, page 76 (line 15), omit “corporation”, substitute “entity”.

[carbon tax price reduction obligation]

(30) Schedule 2, item 3, page 76 (line 16), omit “corporation”, substitute “entity”.

[carbon tax price reduction obligation]

(31) Schedule 2, item 3, page 76 (line 21), omit “a corporation”, substitute “an entity”.

[carbon tax price reduction obligation]

(32) Schedule 2, item 3, page 76 (line 23), omit “corporation”, substitute “entity”.

[carbon tax price reduction obligation]

(33) Schedule 2, item 3, page 76 (line 27), omit “corporation”, substitute “entity”.

[carbon tax price reduction obligation]

(34) Schedule 2, item 3, page 77 (line 5), omit “corporation”, substitute “entity”.

[carbon tax price reduction obligation]

(35) Schedule 2, item 3, page 77 (line 12), omit “corporation”, substitute “entity”.

[carbon tax price reduction obligation]

(36) Schedule 2, item 3, page 77 (after line 28), after Division 2, insert:

Division 2A—Carbon tax removal substantiation notices

60FA Carbon tax removal substantiation notices

Scope

- (1) This section applies to an entity if the entity has made, or is making, one or more regulated supplies of electricity or natural gas.

Comment [A11]: Limits this section to electricity or natural gas only (ie excludes 75,000 licencees synthetic greenhouse gasses and SGG equipment)

Carbon tax removal substantiation notice

- (2) The Commission must, within 30 days after the Royal Assent day, by written notice given to the entity, require the entity:
- (a) to give to the Commission, within the period specified in the notice, a written statement that explains:
- (i) how the carbon tax repeal has affected, or is affecting, the entity’s regulated supply input costs; and
- (ii) how reductions in the entity’s regulated supply input costs that are directly or indirectly attributable to the carbon tax repeal are reflected in the prices charged by the entity for regulated supplies of electricity or natural gas; and
- (b) to do either or both of the following:

Comment [A12]: Reflects the limitation of this section to electricity or natural gas only (ie excludes synthetic greenhouse gasses and SGG equipment)

- (i) give to the Commission, within the period and in the manner and form specified in the notice, information that substantiates the explanation set out in the statement;
 - (ii) produce to the Commission, within the period and in the manner specified in the notice, documents that substantiate the explanation set out in the statement.
- (3) A notice under subsection (2) is to be known as a **carbon tax removal substantiation notice**.
- (4) A period specified in a carbon tax removal substantiation notice must be 21 days after the notice is given.
- (5) A carbon tax removal substantiation notice must explain the effect of:
- (a) section 60FB; and
 - (b) section 60FC; and
 - (c) sections 137.1 and 137.2 of the *Criminal Code*.

Section does not limit section 60H

- (6) This section does not limit section 60H (which is about the price-related information-gathering powers of the Commission).

Section does not limit section 155

- (7) This section does not limit section 155 (which is about the general information-gathering powers of the Commission).

60FB Extending periods for complying with carbon tax removal substantiation notices

- (1) ~~A~~An entity that has been given a carbon tax removal substantiation notice may, at any time within 14 days after the notice was given to the entity by the Commission, apply in writing to the Commission for an extension of the period for complying with the notice.
- (2) The Commission may, by written notice given to the entity, extend the period within which the entity must comply with the notice, so long as the extension is for a period of not more than 28 days.

Comment [A13]: Limits any extensions to 28 days

60FC Compliance with carbon tax removal substantiation notices

- (1) ~~A~~An entity that is given a carbon tax removal substantiation notice must comply with it within ~~30 days of the applicable compliance period for~~ the notice.
- (2) The **applicable compliance period** for a carbon tax removal substantiation notice is:
- (a) the period of 21 days specified in the notice; or
 - (b) if the period for complying with the notice has been extended under section 60FB—the period as so extended;
- and includes (if an application has been made under section 60FB for an extension of the period for complying with the notice) the period up until the time when the applicant is given notice of the Commission's decision on the application.
- (3) ~~A~~An entity commits an offence if:
- (a) the entity is subject to a requirement under subsection (1); and
 - (b) the entity is capable of complying with the requirement; and
 - (c) the entity omits to do an act; and

Comment [A14]: This change resolves a conflict between this section and 60FC(2) which defines the 'applicable compliance period' as 21 days, with the option for the ACCC to provide extensions.

Comment [A15]: If the intention is to be 30 days with no extensions, should change (2)(a) to say the period of 30 days and delete (2)(b) and 60FB

(d) the omission breaches the requirement.

Penalty: 200 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) If subsection (3) of this section applies to an individual ~~(whether or not~~ because of subsection 6(2), subsection (3) of this section has effect, in relation to the individual, as if the reference to 200 penalty units were a reference to 40 penalty units.

(6) If subsection (1) of this section applies to an individual ~~(whether or not~~ because of subsection 6(2), the individual is excused from giving information or producing a document in accordance with a carbon tax removal substantiation notice on the ground that the information or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

Comment [A16]: This addition is because the revised definition of 'entity' means that subsection (3) could apply to an individual not because of subsection 6(2), but simply because of the revised definition of 'entity'.

The effect of this section remains that penalties for companies are 200 penalty units (\$34,000) and for individuals are 40 (\$6,800) penalty units.

Comment [A17]: This addition is because the revised definition of 'entity' means that subsection (1) could apply to an individual not because of subsection 6(2), but simply because of the revised definition of 'entity'.

Division 2B—Carbon tax removal substantiation statements

60FD Carbon tax removal substantiation statements

Scope

(1) This section applies to ~~an~~ entity if the entity:

- (a) is an electricity retailer that sells electricity to electricity customers; or
- (b) is a natural gas retailer that sells natural gas to natural gas customers.

Comment [A18]: Section is limited to be electricity or natural gas supplies only

Carbon tax removal substantiation statement

(2) Within 30 days after the Royal Assent day, the entity must give to the Commission:

(a) a written statement that sets out:

- (i) if the entity has electricity customers—the entity's estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity's cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to each class of electricity customers during the financial year that began on 1 July 2014 ~~and if such entity fails to pass on such saving to customers it shall on the 1 July 2015 pay to the Commonwealth of Australia an amount equivalent to 250 percent of the said saving which have not been passed on to the electricity customer;~~ and

Comment [A19]: See the new section 60CA above.

- (ii) if the entity has natural gas customers—the entity's estimate, on an average annual percentage price basis, or an average annual dollar price basis, of the entity's cost savings that have been, are, or will be, directly or indirectly attributable to the carbon tax repeal and that have been, are being, or will be, passed on to each class of natural gas customers during the financial year that began on 1 July 2014 ~~and if such entity fails to pass on such saving to customers it shall on the 1 July 2015 pay to the Commonwealth of Australia an amount equivalent to 250 percent of the said saving which have not been passed on to the natural gas customer;~~ and

Comment [A20]: See the new section 60CA above.

(b) information that substantiates the estimate or estimates set out in the statement.

Note: Section 137.1 of the *Criminal Code* creates an offence of providing false or misleading information.

- (3) A statement under paragraph (2)(a) is to be known as a *carbon tax removal substantiation statement*.
- (4) If the entity has given a carbon tax removal substantiation statement to the Commission, the entity must ensure that a copy of the statement is available on the entity's website, in a way that is readily accessible by the public, until the end of 30 June 2015.

Compliance

- (5) ~~A~~An entity commits an offence if:
- (a) the entity is subject to a requirement under subsection (2) or (4); and
 - (b) the entity is capable of complying with the requirement; and
 - (c) the entity omits to do an act; and
 - (d) the omission breaches the requirement.

Penalty: 500 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) If subsection (5) of this section applies to an individual ~~(whether or not)~~ because of subsection 6(2~~+~~), subsection (5) of this section has effect, in relation to the individual, as if the reference to 500 penalty units were a reference to 40 penalty units.
- (8) If subsection (2) of this section applies to an individual ~~(whether or not)~~ because of subsection 6(2~~+~~), the individual is excused from giving an estimate or information under subsection (2) of this section on the ground that the estimate or information might tend to incriminate the individual or expose the individual to a penalty.

Comment [A21]: This addition is because the revised definition of 'entity' means that subsection (5) could apply to an individual not because of subsection 6(2), but simply because of the revised definition of 'entity'.

The effect of this section remains that penalties for companies are 200 penalty units (\$34,000) and for individuals are 40 (\$6,800) penalty units.

Section does not limit section 60H

- (9) This section does not limit section 60H (which is about the price-related information-gathering powers of the Commission).

Section does not limit section 155

- (10) This section does not limit section 155 (which is about the general information-gathering powers of the Commission).

Report to Parliament

- ~~(11) The~~ Within 13 months after the Royal Assent day, the Commission must report to Parliament ~~on~~ respect of the compliance ~~of~~ by all ~~entity within 13 months from the date of Royal Assent~~ entities.

Comment [A23]: These changes are designed to reflect the objective of the amendment, as understood.

The change is to make it clear that the ACCC is reporting within 13 months of the date of Royal Assent.

The previous provision could be misread as requiring the ACCC to report at an unspecified future time about how entities have complied over the first 13 months from the date of the Royal Assent.

Division 2C—Statements for customers

60FE Statements for customers

Scope

- (1) This section applies to ~~a~~an entity if the entity:
- (a) is an electricity retailer that sells electricity to -electricity customers; or
 - (b) is a natural gas retailer that sells natural gas to -natural gas customers.

Comment [A24]: Section is limited to electricity and natural gas supplies only

Preparation of statement

- (2) Within 30 days after the Royal Assent day, the entity must prepare a statement that:
- (a) if the entity has electricity customers—identifies, on an average annual percentage price basis, or an average annual dollar price basis, the estimated cost savings, to each class of electricity customers, that:
 - (i) have been, are, or will be, directly or indirectly attributable to the carbon tax repeal; and
 - (ii) are for the financial year that began on 1 July 2014; and
 - (b) if the entity has ~~domestic~~ natural gas customers—identifies, on an average annual percentage price basis, or an average annual dollar price basis, the estimated cost savings, to each class of natural gas customers, that:
 - (i) have been, are, or will be, directly or indirectly attributable to the carbon tax repeal; and
 - (ii) are for the financial year that began on 1 July 2014.

Comment [A25]: Reflects the earlier change that the defined term is now “natural gas customers” not “domestic natural gas customers”, to ensure that business customers are included.

Communication of contents of statement to ~~domestic~~ customers

- (3) During the period:
- (a) beginning 30 days after the Royal Assent day; and
 - (b) ending 60 days after the Royal Assent day;
- the entity must ensure that the contents of the statement prepared by it under subsection (2) that relates to a class of electricity customers or natural gas customers is communicated to each customer of that class.

Comment [A26]: Reflects the earlier change to drop “Domestic” from the defined terms, to ensure that business customers are included

Note: Section 137.1 of the *Criminal Code* creates an offence of providing false or misleading information.

Compliance

- (4) ~~A~~An entity commits an offence if:
- (a) the entity is subject to a requirement under subsection (2) or (3); and
 - (b) the entity is capable of complying with the requirement; and
 - (c) the entity omits to do an act; and
 - (d) the omission breaches the requirement.

Penalty: 400 penalty units.

- (5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) If subsection (4) of this section applies to an individual (~~whether or not~~ because of subsection 6(2)), subsection (4) of this section has effect, in relation to the individual, as if the reference to 400 penalty units were a reference to 40 penalty units.
- (7) If subsection (2) or (3) of this section applies to an individual (~~whether or not~~ because of subsection 6(2)), the individual is excused from:
- (a) preparing a statement under subsection (2) of this section; or
 - (b) communicating the contents of a statement under subsection (3) of this section;
- on the ground that the information in the statement might tend to incriminate the individual or expose the individual to a penalty.

Comment [A27]: This addition is because the revised definition of ‘entity’ means that subsection (6) could apply to an individual not because of subsection 6(2), but simply because of the revised definition of ‘entity’.

The effect of this section remains that penalties for companies are 200 penalty units (\$34,000) and for individuals are 40 (\$6,800) penalty units.

Comment [A28]: This addition is because the revised definition of ‘entity’ means that subsection (6) could apply to an individual not because of subsection 6(2), but simply because of the revised definition of ‘entity’.

[carbon tax price reduction obligation]

- ~~(20)~~(37) Schedule 2, item 3, page 78 (line 7), omit “corporations”, substitute “entities”.
[carbon tax price reduction obligation]
- (38) Schedule 2, item 3, page 78 (line 17), omit “corporations”, substitute “entities”.
[carbon tax price reduction obligation]
- (39) Schedule 2, item 3, page 78 (line 21), omit “a corporation”, substitute “an entity”.
[carbon tax price reduction obligation]
- (40) Schedule 2, item 3, page 78 (line 30), omit “a corporation”, substitute “an entity”.
[carbon tax price reduction obligation]
- (41) Schedule 2, item 3, page 79 (line 3), omit “a corporation”, substitute “an entity”.
[carbon tax price reduction obligation]
- (42) Schedule 2, item 3, page 79 (line 8), omit “corporations”, substitute “entities”.
[carbon tax price reduction obligation]
- (43) Schedule 2, item 3, page 79 (line 18), omit “corporations”, substitute “entities”.
[carbon tax price reduction obligation]
- (44) Schedule 2, item 3, page 79 (line 23), omit “a corporation”, substitute “an entity”.
[carbon tax price reduction obligation]
- (45) Schedule 2, item 3, page 79 (lines 32 and 33), omit “a corporation”, substitute “an entity”.
[carbon tax price reduction obligation]
- (46) Schedule 2, item 3, page 81 (after line 21), after subsection 60H(5), insert:

Section does not limit section 60FA

- (5A) This section does not limit section 60FA (which is about carbon tax removal substantiation notices).

[carbon tax price reduction obligation]

- ~~(21)~~(47) Schedule 2, item 3, page 82 (line 23), omit “A corporation”, substitute “An entity”.
[carbon tax price reduction obligation]
- (48) Schedule 2, item 25, page 90 (line 24), omit “section”, substitute “paragraph 60FD(2)(b) or section 60FA or”.
- [carbon tax price reduction obligation]**